



POLICE DEPARTMENT

The  
City of  
New York

In the Matter of the Disciplinary Proceedings :  
- against - : FINAL  
Police Officer David Kozlow : ORDER  
Tax Registry No. 890310 : OF  
Police Service Area 7 : DISMISSAL

Police Officer David Kozlow, Tax Registry No. 890310, Shield No. 3568, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2011-5374, as set forth on form P.D. 468-121, dated February 22, 2012, and after a review of the entire record, has been found Guilty of Specification Nos. 1 through 10 and 12 through 14. He has been found Not Guilty of Specification No. 11.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer David Kozlow from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

RAYMOND W. KELLY  
POLICE COMMISSIONER

EFFECTIVE: On August 22, 2013 @0001Hrs.



POLICE DEPARTMENT

**July 29, 2013**

In the Matter of the Charges and Specifications : Case No. 2011 5374

- against :

Police Officer David Kozlow :

Tax Registry No. 890310 :

Police Service Area 7 :

X

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Robert W. Vinal  
Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: David Bernstein, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For the Respondent: John Tynan, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, New York 10038

To:

HONORABLE RAYMOND W. KELLY  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on January 29, 2013, March 19, 2013, and April 8, 2013, charged with the following:

1. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about July 8, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did fail to timely sign the Return Roll Call at the end of his tour.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT -- PROHIBITED CONDUCT  
GENERAL REGULATIONS

2. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about July 8, 2011, did fail to call the 84th Precinct Desk Officer and report the reason why he would not be able to sign the Return Roll Call at the end of his tour.

P.G. 202-21, Page 1, Paragraph 16 – POLICE OFFICER DUTIES AND RESPONSIBILITIES

3. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about July 16, 2011, after having been instructed by his immediate supervisor to report directly to post from the muster location, did fail and neglect to comply with said instruction, to wit: said Police Officer did fail to timely arrive at his assigned post.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS  
GENERAL REGULATIONS

P.G. 202-21, Page 1, Paragraph 2 – POLICE OFFICER DUTIES AND RESPONSIBILITIES

4. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about July 23, 2011, did fail and neglect to make proper activity log entries pertaining to any assigned jobs or dispositions after 1305 hours.

P.G. 212-08, Page 1 – ACTIVITY LOGS  
COMMAND OPERATIONS

5. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about July 23, 2011, was discourteous to on-duty New York City Police Department Lieutenant Elizabeth Morrissey, Tax No. 906874, to wit: when said Lieutenant inquired about the property said Police Officer was attempting to voucher, said Police Officer became disrespectful and belligerent.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT - GENERAL  
GENERAL REGULATIONS

6. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about July 23, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did fail to notify an 84th Precinct supervisor that he was present in the Precinct after said Police Officer had gone end of tour.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

7. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about August 3, 2011, did fail to timely submit his Police Officer's Monthly Performance Report (PD439-1414) for July 2011.

P.G. 202-21, Page 1, Para 15 POLICE OFFICER  
DUTIES AND RESPONSIBILITIES

8. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about August 9, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: when said Police Officer did prepare and submit his Police Officer's Monthly Report (PD439-1414) for July 2011, said Police Officer did so with inappropriate statements contained therein.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

9. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about September 30, 2011, did fail to inform the 84th Precinct Desk Officer that he had a prisoner in the Precinct.

P.G. 208-02 Page 1 Paragraph 3 – ARRESTS - REMOVAL TO DEPARTMENT  
FACILITY FOR PROCESSING  
ARRESTS

10. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about October 1, 2011, was discourteous during Roll Call, to wit: said Police Officer did act disruptive [sic] and disrespectful [sic] during the 84th Precinct's Second Platoon Roll Call. *(As amended)*

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT - GENERAL  
GENERAL REGULATIONS

11. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about October 2, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did drive a Department vehicle in a reckless manner while in pursuit of an escaped dog. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT - PROHIBITED CONDUCT  
GENERAL REGULATIONS

12. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about October 2, 2011, was absent from his assignment without permission or police necessity.

P.G. 203-05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY - GENERAL  
GENERAL REGULATIONS

13. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about October 2, 2011, did fail to notify the radio dispatcher of a pick-up assignment, not emanating from the Communications Section, to wit: said Police Officer did fail to notify the radio dispatcher that he was in pursuit of an escaped dog.

P.G. 202-23, Page 1, Paragraph 14 – RADIO MOTOR PATROL RECORDER  
DUTIES AND RESPONSIBILITIES

14. Said Police Officer David Kozlow, while on-duty and assigned to the 84th Precinct, on or about October 2, 2011, after having been ordered by Sergeant Gerald Walsh, Tax No. 894994, to stop pursuing an escaped dog, did fail and neglect to comply with said directive.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS  
GENERAL REGULATIONS

The Department was represented by David Bernstein, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification Nos. 1 through 10 and 12 through 14.

Respondent is found Not Guilty of Specification No. 11.

SUMMARY OF EVIDENCE PRESENTED

Introduction

All of the testimony summarized below involves incidents that took place while Respondent was on-duty assigned to the 84 Precinct.

The Department's Case

The Department called Sergeants Raymond Holub, Thomas Sabbio, and James Glancy; Lieutenant Elizabeth Morrissey; Sergeants Thomas Brogan and Lashonda Dyce; Lieutenants Mary Boykin and John Mangan; and Sergeants Gerald Walsh and Christopher Brabham as witnesses.

Sergeant Raymond Holub

Holub, an 18-year member of the Department who is assigned to the 84 Precinct, testified that he is regularly assigned to serve as the desk officer. Holub explained that when the arresting or escorting officer brings a prisoner into the precinct, the officer must present the prisoner to the desk officer. A prisoner pedigree sheet is then given to the officer to fill out. The desk officer enters the prisoner's name into the command log as being present inside precinct. The officer must search the prisoner in the presence of the desk officer. Items found in the prisoner's pockets are placed on the desk. Any money found on the prisoner's person is counted in front of the desk officer and then vouchered

for safekeeping. Any contraband found on the prisoner's person is inventoried to either be vouchered as arrest evidence or vouchered for safekeeping.

Holub explained that the purpose of these procedures is twofold: to insure the safety of everyone inside the stationhouse and to avoid integrity issues such as theft allegations. That is why any money possessed by the prisoner is placed on the desk and the counting of the money is witnessed by the patrol supervisor, the prisoner, and the arresting or escorting officer. If the desk officer is busy when an arresting or escorting officer enters the station house with a prisoner, the officer must wait with the prisoner in front of the desk until the desk officer is available. Holub opined that it is not unusual to see a line of officers with prisoners forming in front of the desk.

Holub recalled that on September 30, 2011, he was working as the desk officer at the 84 Precinct when, shortly after 3:00 p.m., he received a phone call from a detective who told him to expect to be presented with a prisoner who had been arrested for burglary and who was being transported to the 84 Precinct. When Holub inquired as to who was bringing the prisoner in for the detective, he was told that police officers were bringing the prisoner in for him. Holub reached out to those officers and they informed Holub that they had already dropped off the prisoner and Respondent, who was assigned to escort the prisoner, at the 84 Precinct just before 3:00 p.m. Holub asked if they knew where Respondent was and was informed that he was inside the locker room. Holub instructed an officer to tell Respondent to report to the front desk.

When Respondent reported to the desk, Holub asked him whether he had escorted a prisoner into the station house and put him into the holding cell without first presenting the prisoner in front of the desk or bringing the fact that the prisoner was present to

Holub's attention. Respondent replied in the affirmative and told Holub that when he had escorted the prisoner into the station house, Holub was on the telephone and looked busy, so Respondent decided to secure the prisoner by putting him into the holding cell. Holub instructed Respondent to immediately retrieve the prisoner from the holding cell and present him at the desk.

Sergeant Albert, who was present at the desk preparing to start his shift, also instructed Respondent, in what Holub described as a much more affirmative manner, to get the prisoner out of the cell and get him in front of the desk immediately. Words were exchanged between Albert and Respondent, at which point Holub put a stop to the exchange. Holub asked Albert to back away and directed Respondent to bring the prisoner to the desk. Respondent proceeded to retrieve the prisoner from the holding cell and brought him in front of the desk where Respondent searched the prisoner.

Because Respondent had breached the procedure that he search his prisoner at the front desk, Holub ordered the cell attendant and the arresting officers of the five or six prisoners who had been lodged in the same holding cell that Respondent's prisoner had been placed into to remove all of these prisoners, to search each one of them again, and to search the holding cell to insure that Respondent's prisoner had not transferred any contraband, weapons, or any other harmful objects to one of the other prisoners or secreted any items inside the cell.

On cross examination, Holub agreed that he was on the telephone at approximately 3:00 p.m. engaged in an important conversation with either IAB or the Shield Desk regarding another prisoner. Holub confirmed that Officer Isaac was one of the officers who drove Respondent and the prisoner to the 84 Precinct and that he was not

disciplined. Holub did not speak to Officer Borgman who was also in the car that transported the prisoner to the command. Holub also did not speak to the cell attendant about the prisoners who were in the same holding cell as Respondent's prisoner. The research of these prisoners resulted in nothing being found. Holub agreed that the prisoner that Respondent brought in did not complain that any of his property was missing or that he had been mistreated by the other prisoners or by Respondent.

Holub acknowledged that it was preferable for prisoners to be brought into the 84 Precinct through the rear, rather than the front, door of the 84 Precinct due to safety concerns. Holub also acknowledged that the officer who apprehended the prisoner would have conducted a search of the prisoner for weapons. Holub was not informed that the prisoner was a dangerous person and the cell attendant did not allege that the prisoner had threatened anyone or flashed any dangerous objects. No crimes were committed in the holding cell while the prisoner was lodged there.

Sergeant Thomas Sabbio

Sabbio, an eight-year member of the Department who is currently assigned to the 120 Precinct, recalled that on September 30, 2011, he was assigned to the 84 Precinct and that he was on duty assigned as patrol supervisor. Sabbio recalled that he witnessed an argument between Holub and Respondent at the front desk in reference to a prisoner. Sabbio directed Respondent to bring his prisoner to the holding cells.

On October 1, 2011, Sabbio was on duty and conducted roll call. Respondent was present at this roll call. During this roll call, Sabbio gave instructions on prisoner safety because the prisoner that Respondent had brought to the holding cells the previous night had tried to hang himself in the cell using his own shirt as a noose. As Sabbio was

speaking about prisoner safety to the 14 to 16 officers who were present at the roll call, Sabbio looked over at Respondent and saw that he was dancing around in a circle, twirling his right index finger in the air, laughing, and exclaiming, "Yahoo" loudly. Sabbio was taken aback by Respondent's conduct which he thought was discourteous to him and demoralizing to the other officers at roll call.

On cross-examination, Sabbio acknowledged that during his observation of the discussion between Respondent and Holub, the prisoner that was brought in front of the desk did not appear to him to be a threat to himself and no one told Sabbio that the prisoner might be a threat to himself. Sabbio agreed that the cell attendant's duty is to keep a close eye on the prisoners in the holding cell. Sabbio acknowledged that his lecture on prisoner safety was brief, lasting only about two to three minutes, and that Respondent's dancing lasted only five to seven seconds. Sabbio confirmed that none of the officers who were present at roll call told him that they were so distracted by Respondent's actions that they had not heard his instruction regarding prisoner safety. Sabbio agreed that if Respondent's prisoner had not tried to hang himself with his shirt, Sabbio would not have given instructions on prisoner safety during the roll call. Sabbio was not aware that Respondent had received a Command Discipline (CD) the day before from Holub. Sabbio confirmed that he issued Respondent a CD for his actions during roll call.

Sergeant James Glancy

Glancy, a 22-year member of the Department who is assigned to the 84 Precinct, was on duty inside the 84 Precinct on September 30, 2011. His assignment was to

monitor and, if needed, to authorize overtime for officers assigned to the 84 Precinct. When Glancy saw Respondent coming out of the arrest processing area, Glancy asked him what he was doing. Respondent replied that he was processing an arrest. Glancy told Respondent to get his paperwork in as soon as possible. Glancy told Respondent this because two weeks earlier Respondent had processed an arrest that resulted in an excessive amount of overtime.

Glancy did not ask Respondent if he had brought the arrestee before the front desk because Glancy did not have any reason to think that the prisoner had not been brought before the desk. Glancy did not authorize Respondent to lodge the prisoner in a holding cell without having presented the prisoner to the desk officer.

On cross-examination, Glancy agreed that he was not sure where he was between 2:30 p.m. and 3:00 p.m. Although Glancy could have been at the front desk, he also could have been in one of the adjacent offices performing administrative work or moving about the Precinct. Glancy agreed that Respondent could have entered the Precinct with his arrestee and without Glancy having seen him come in. Respondent could also have entered through the rear entrance of the station house. It was between 2:00 p.m. and 4:00 p.m. that Glancy saw Respondent coming out of the arrest processing area. Glancy had no recollection of observing Respondent with the prisoner.

Lieutenant Elizabeth Morrissey

Morrissey, a 19-year member of the Department who is assigned to the 84 Precinct, recalled that on July 8, 2011, she was on duty assigned as the desk officer at the 84 Precinct. Morrissey started her tour of duty as the desk officer at about 2:45 p.m.

Morrissey was informed by the desk officer she relieved that Respondent was at Brooklyn Central Booking "on a walk-through" of prisoners. Since Respondent's tour was scheduled to end at 3:40 p.m. and he needed to be relieved, Morrissey assigned an officer to relieve him. This officer left the 84 Precinct at 3:30 p.m. to drive to Brooklyn Central Booking which was less than one mile away.

At about 6:00 p.m., Morrissey saw Respondent inside the 84 Precinct. Since it was past the end of his tour, Morrissey asked Respondent why he was there. Respondent replied that he had just returned to the 84 Precinct from Brooklyn Central Booking. Morrissey asked him why it had taken so long for him to be relieved. Respondent replied that after he was relieved, he received a new assignment to escort prisoners into a courtroom. Morrissey asked Respondent why he had not telephoned the desk to report this new assignment to move prisoners. Morrissey explained that she would have sent an officer to Brooklyn Central Booking to relieve Respondent and perform this new assignment to escort prisoners into a courtroom to avoid having Respondent perform this new assignment which would incur operational overtime.

As a result of her conversation with Respondent, Morrissey contacted the relieving officer. The relieving officer stated that she relieved Respondent at 4:00 p.m. Morrissey then called Brooklyn Central Booking to speak to a supervisor regarding the new assignment Respondent had told her about. The supervisor informed Morrissey that Respondent's new assignment had been to help escort prisoners from another command into the courtroom. When Morrissey asked if this new assignment would have taken two hours to perform, the supervisor replied that it absolutely should not have taken that long.

Morrissey asserted that Respondent had not called the desk at the end of his tour to report and check in. If he had, Morrissey would have asked him his location and she would have sent an officer to relieve him so that he could immediately come back to the 84 Precinct and sign out which would have prevented any further operational overtime.

Morrissey testified that if an officer is guarding a prisoner at the end of the officer's tour, the proper way to notify the desk officer is through a land line telephone inside the courtroom.

On July 23, 2011, Morrissey was serving as patrol supervisor when, at approximately 5:00 p.m., she saw Respondent, whose tour had ended at 3:40 p.m., standing in front of the desk wearing civilian clothes telling the desk officer that he had property that needed to be vouchered. Morrissey asked him how he got the property and Respondent replied that the property was from a "job." Morrissey then asked Respondent what time the "job" had occurred. Respondent stated that the "job" occurred during the early afternoon. Morrissey told Respondent that he should have vouchered the property then and informed his supervisor. Morrissey then asked Respondent where he had been between 3:40 p.m. to 5:00 p.m. Respondent replied that he was "redoing 61s downstairs." Morrissey told Respondent to wait while she verified where the property had come from. Morrissey spoke to his immediate supervisor from the day tour. The supervisor told her that she knew nothing about this property.

Morrissey then told Respondent to show her his Activity Log. Respondent became agitated and annoyed that Morrissey was inquiring as to his whereabouts. Morrissey saw that his last Activity Log entry for that day was at about 12:00 p.m.

Morrissey then walked over to the Xerox machine to make a photocopy of his Activity Log entries. Respondent became agitated and asked Morrissey, "Who are you to question me?" He stated that she was the "4 to 12" supervisor. Respondent began speaking loudly. He was starting to cause a scene. Morrissey told Respondent "Stop!" more than once. Morrissey then told Respondent that he was end of tour. She reassigned the property to be vouchered to another officer.

Morrissey testified that, as far as she knew, Respondent did not notify anyone that he was present inside the station house after his scheduled tour had ended. The proper protocol when an officer enters the station house after the officer's scheduled tour has ended is for the officer to come before the desk, tell the desk officer the reason for the lateness, and sign in the Interrupted Patrol Log. The purpose of this procedure is to insure that the desk officer knows where an officer is at all times as a safety matter and to be able to account for who is present inside the station house at any given time.

On cross-examination, Morrissey recalled that she was told by Malloy, the officer who had relieved Respondent on July 8, 2011, that she had relieved Respondent at 4:00 p.m. However, after being shown Malloy's Activity Log entry [Department's Exhibit (DX) 2A], Morrissey agreed that Malloy had written that she had relieved Respondent at 4:30 p.m. Morrissey acknowledged that Respondent was assigned to work at Central Booking that day. Morrissey did not sign an overtime slip for Respondent even though Respondent had worked past the end of his tour. Morrissey confirmed that she did not give the photocopy of Respondent's Activity Log entry to Department investigators. She attached the copy to the CD, but did not sign it to show that she had copied it. Morrissey asserted that Respondent was yelling while she was photocopying the memo book.

Morrissey agreed that at the point in time when Respondent was causing a scene, only she and the desk officer were in the area.

Sergeant Thomas Brogan

Brogan, a 19-year member of the Department who is assigned to the 84 Precinct, recalled that on July 23, 2011, he was assigned as desk officer at the 84 Precinct starting at approximately 3:00 p.m. At approximately 5:00 p.m., Respondent came in front of the desk. Respondent was not in uniform. He was holding what he stated was "found property." Brogan asked him when the found property had come into his possession and why he was not in uniform. Morrissey came over and asked Respondent the same questions. Brogan saw Morrissey and Respondent walk over to the copy machine in the Muster Room area. The Muster Room area was visible to Brogan from his position at the desk but he could not hear the conversation between Morrissey and Respondent. Brogan could hear that their voices were loud and that Respondent sounded annoyed and upset. Brogan heard Morrissey say "Stop!" a number of times.

Respondent did not notify Brogan that he was inside the station house. Brogan did not know where Respondent was prior to coming to the desk.

On cross-examination, Brogan confirmed that no one complained to him that Respondent and Morrissey were speaking too loudly. Brogan agreed that no one else was around except for Respondent, Morrissey, and himself. Brogan had no recollection as to what type of property Respondent had found. Brogan did hear Morrissey or Respondent using profanity or making threats.

Sergeant Lashonda Dyce

Dyce, a ten-year member of the Department who is currently assigned to the Auxillary Police Section, was assigned to the 84 Precinct from July 2008 to April 2012.

Dyce explained that a Monthly Activity Report (MAR) is a compilation of an officer's activity during the previous month. MARs are due on the third day of the following month. Dyce was tasked with collecting Respondent's MAR for July 2011. Respondent did not turn in his MAR for July 2011 on August 3, 2011. His July 2011 report was therefore late. Dyce spoke to Respondent about three times after August 3, 2011 reminding him to turn in his July MAR.

Dyce identified Respondent's July 2011 MAR (DX 1) which she received from him on August 9, 2011. [On line 2 of his MAR, Respondent wrote "been there/done it/what next." In the section of the MAR which directs the officer to "List Significant Achievements" regarding "General Enforcement against crime, quality of life and traffic violations," in the column headed "Date" Respondent wrote "7/2011." In the body of this section, Respondent wrote, "Excellent police work on day tour 8X4. But 4X12 supervisors removed cash O/T slips, accused of stealing time, issuing CDs for day tour work, ordered not to take police action, but never put in writing for memo book entry and/or signing memo book/ Discrimination." In the section underneath the "General Enforcement" section which is headed "Declared Condition" Respondent wrote, "Same as reported above."] Dyce asserted that Respondent was supposed to have written the types of arrests he made, the types of quality of life conditions that he addressed, and the types of summons that he had issued during July 2011. Dyce stated that Respondent's written responses were not an appropriate way to complete a MAR. Dyce did not speak

to Respondent regarding the manner in which he had completed the MAR and Dyce did not ask Respondent to redo his MAR. Dyce forwarded the MAR to her supervisor and to the 84 Precinct's Integrity Control Officer (ICO).

On cross-examination, Dyce confirmed that she did not report to IAB the allegation that Respondent made on the back of his MAR. Dyce agreed that stealing time constitutes corruption by a supervisor. Dyce agreed that she is required to report to Internal Affairs after being notified of corruption. Dyce did, however, provide the report to the ICO. Dyce agreed that Respondent had only worked on patrol on two days during July 2011 and that it was not unusual for him to not have any issued summonses.

Lieutenant Mary Boykin

Boykin, a 15-year member of the Department who is currently assigned to the Police Academy, recalled that on July 16, 2011, she was assigned as the Brooklyn North supervisor for Brooklyn North Precincts supervising officers who had been assigned to a Critical Response Vehicle (CRV) detail in Manhattan. Boykin described CRV as a high visibility post. The muster location was outdoors on Broadway and Liberty Street in Manhattan. As part of the muster process, all the officers would come to respective locations to assemble and the supervisors would go inside to meet with the Counterterrorism Bureau and to receive post assignments.

Boykin attended a briefing at which she was told by an inspector that it was imperative that all officers go directly to post. Boykin then met with Brooklyn North sergeants and told the sergeants that the officers were to respond directly to post. Boykin

also told the sergeants that it was imperative for them to check and ensure that the officers were on their post.

Once the sergeants received the instructions, they met with the officers from the various precincts, assigned them to rosters, gave them their posts and meal assignments, and conducted inspections of protective equipment. The officers were deployed from the muster location after the radio motor patrol cars (RMP) were lined up in a single line formation and the order to deploy was issued.

Boykin arrived at the muster location at approximately 8:00 a.m. and deployment occurred at approximately 8:45 a.m. Boykin arrived at Respondent's post at the Crown Plaza Hotel, Manhattan at 9:50 a.m. When Boykin did not see Respondent's RMP, she called Respondent's cell phone number. Boykin told him that she was standing at Respondent's post and did not see him. Respondent replied that he would be there in five to ten minutes. Respondent and his partner arrived to the post at 10:02 a.m. and went over to where Boykin was standing. Boykin then asked them if there was any reason why they did not follow the directive to go straight to post. Respondent stated that they had run into traffic. Boykin told Respondent that she had left the muster location 45 minutes after Respondent and that it had taken her only 20 minutes to drive to the post whereas Respondent took approximately 77 minutes to drive to the post.

Boykin examined the officers' Activity Logs and saw that their only entry for July 16, 2011 was that they were present for duty at the muster location. Boykin "scratched" Respondent's Activity Log and wrote "July 16, 2011, 1003 hours, Lieutenant Boykin visit, failed to report as directed after deployment." (DX 2)

On cross examination, Boykin stated that she arrived at Respondent's post at approximately 9:50 a.m. and that she was standing in front of Respondent's post when she saw Respondent and his partner arrive in their RMP.

Lieutenant John Mangan

Mangan, who is currently assigned to the Patrol Borough Brooklyn South, was assigned to the 84 Precinct from 2009 to 2011 and served as ICO from October 2010 to November 2011. Mangan was instructed by the Commanding Officer (CO) of the 84 Precinct to investigate Respondent because he had been issued numerous CDs which had not been adjudicated. Mangan obtained Respondent's Activity Log entries for July 23, 2011 (DX 3) from Morrissey.

Mangan conducted an official Department interview of Respondent. Mangan asked Respondent about July 8, 2011, when Respondent had remained at Brooklyn Central Booking past the end of his tour escorting prisoners. When Mangan asked Respondent whether he had called the desk sergeant to report that he was out past the end of his tour, Respondent answered that he had not. Mangan also questioned Respondent about his July 2011 MAR (DX 1). Mangan asked Respondent if the signature on the MAR was his and Respondent replied that it was his signature. Mangan also asked Respondent if he believed that he had appropriately filled out the MAR. Respondent replied that it reflected his activity for the month of July. Respondent also stated that he felt that he was being disciplined incorrectly.

Mangan questioned Respondent regarding his September 30, 2011 action of lodging a prisoner. Respondent told Mangan that when he escorted the prisoner into the

station house, the desk sergeant was on the phone. Respondent asserted that he had waited at the desk for five minutes which Respondent stated was three minutes too long. Respondent told Mangan that he then brought the prisoner into the holding pen area, searched him, and lodged him in a cell. Mangan asked Respondent if the desk sergeant was aware that the prisoner was in the cell. Respondent replied that he was not aware. Mangan also questioned Respondent regarding the October 2, 2011 incident regarding the dog. Mangan asked Respondent if he had notified anyone that he was leaving his fixed post. Respondent replied that he had not notified anyone.

On cross examination, Mangan agreed that Respondent had correctly filled out that portion of July 2011 MAR (DX 1) that contains boxes that are to be filled with numbers. Mangan also agreed that the section of the MAR form regarding general enforcement against crime, quality of life, and traffic violations does not state what an officer may not write in that section.

On redirect examination, Mangan testified that Respondent told him that while he was driving to his post on July 16, 2011, he stopped to purchase coffee.

Sergeant Gerald Walsh

Walsh, a 24-year member of the Department who is assigned to the 84 Precinct, recalled that on October 2, 2011, Respondent's assignment was the fixed RMP post at Tillary Street and Adams Street near the entrance to the Brooklyn Bridge and that Respondent was to remain on that fixed post in case something happened so that he could shut down the Brooklyn Bridge to emergency personnel only. Respondent could not leave that post until another officer was physically present to relieve him.

Walsh saw Respondent drive his RMP with its turret lights on away from the post. Respondent drove down Tillary Street and made a right-hand turn onto Jay Street. The RMP then traveled halfway down the road between Jay Street and Tech Place, where it crossed a double yellow line. The RMP's door then flew open and Walsh noticed that a little dog was running around near the RMP. The door closed again, and the RMP backed out past the double yellow line. Respondent then made a U-turn and drove to Johnson Place. Respondent went across the double yellow line again and made another turn. Respondent drove halfway down the street, stopped, and then proceeded on Jay Street towards Tillary Street chasing the little dog through a red light.

Walsh walked into the street. Respondent slowed the RMP down and was about three feet away from Walsh with his window open when Walsh yelled, "Kozlow, stop this car!" Respondent did not look at Walsh. He hit the gas and drove down Chapel Street. Respondent eventually stooped near another fixed post at Flatbush Avenue and Concord. Walsh followed Respondent in a van. Walsh asked Respondent what his post was. Respondent relied, "Tillary and Adams." Walsh directed Respondent to return to his post immediately. Walsh then followed Respondent's RMP to his post. Respondent started to tell Walsh about the dog, but Walsh told him that he did not want to hear about the dog because "I've already told you about this post. You are not to leave this post for anything." Walsh recalled that he wrote in Respondent's Activity Log that he was off post and that he had been driving recklessly. Walsh notified the CO and Mangan.

On cross-examination, Walsh admitted there could be reasons for an officer to leave a fixed post and that all of the possible reasons are not contained in the Patrol Guide and are not stated to officers when they assigned to fixed posts. Walsh

acknowledged that there are no set rules for officers assigned to a fixed post as to when to leave. Walsh agreed that when Respondent turned the RMP onto Jay Street he did not know whether Respondent was trying to catch a dog that was running through the intersection. Walsh agreed that he could have used his radio to communicate with Respondent, but he did not do so. Walsh also agreed that he did not make any radio transmissions that he was following Respondent's RMP in his van and leaving his own post. Walsh also did not put over the radio that he had left his van and stepped into the street to confront Respondent. Walsh was not punished for not radioing that he was following a RMP. Walsh could not recall whether he was driving the van that followed Respondent's RMP or if an officer was driving the van.

After he was shown Respondent's Activity Log, Walsh admitted that he had only written "off post and failure to notify Central of job" and that he did not write anything about reckless driving in the entry he made in Respondent's Activity Log. Walsh did not order Respondent off his post. Respondent was removed from his post based on what Walsh told the CO and Mangan. Walsh agreed that an officer can stop traffic.

Sergeant Christopher Brabham

Brabham, a 14-year member of the Department who is currently assigned to the 79 Precinct, testified about the July 16, 2011 CRV detail in a manner consistent with Boykin regarding the purpose of CRV and that the muster location was at Liberty Street and Vesey Street, Manhattan. Brabham testified that he told all of the officers at the muster location that they were to proceed directly from the muster location to their assigned posts.

On cross-examination, Brabham agreed that he had no recollection of seeing Respondent or speaking to Respondent that day. Brabham did not recall signing Respondent's Activity Log. After being shown DX 2, Brabham acknowledged that he had signed Respondent's Activity Log twice that day, once at 11:10 a.m. and once at 1:12 p.m. Brabham also acknowledged that had written in Respondent's Activity Log the initials "N/V/O" which stand for no violations observed. Brabham agreed that once roll call is finished, officers are given a little time to get to their posts. Brabham also agreed that officers are given anywhere from five to ten minutes to park and set up before taking their posts.

Respondent's Case

Respondent called Police Officers Fatimah Wooden, Jeff Boardman, and Anthony Isaac, and Detective William Connor as witnesses and he testified in his own behalf.

Police Officer Fatimah Wooden

Wooden, a nine-year member of the Department who is assigned to the 84 Precinct, recalled that she worked with Respondent on about three occasions. On July 23, 2011, in the early afternoon, Wooden and Respondent responded to a call for police to respond to a location on Hicks Street, Brooklyn. When they arrived at that location, employees of Consolidated Edison Company (Con Ed) approached them and told them that an unknown person had stolen some wire. Someone handed Respondent tools which included a bolt cutter. Respondent told Wooden that he would voucher the tools. They then left the scene. Wooden stated that they could have arrived back the precinct at or

just after 3:40 p.m. Wooden ended her tour and left at approximately 3:40 p.m. She did not put in for overtime that day. Wooden believed that Respondent was still inside the precinct when she signed out for the day.

On cross examination, Wooden admitted that she was uncertain of the exact time that she and Respondent returned to the precinct on July 23, 2011, but her Activity Log entry reflected that she signed out end of tour at 3:40 p.m. Wooden and Respondent had a busy day and after 1:00 p.m. they had responded to at least three or four calls. Wooden did not wait for Respondent to voucher the property before leaving the precinct. On either the next day or the day after, Wooden was asked to provide her Activity Log entries regarding July 23, 2011. When she asked Respondent whether he had vouchered the tools, he told her that he had "gotten into it" with a lieutenant at the desk.

Police Officer Jeff Boardman

Boardman, a seven-year member of the Department assigned to the 84 Precinct, recalled that on September 30, 2011, he and Officer Anthony Isaac responded to a radio transmission that an officer at York Street, Brooklyn, had a burglary suspect in custody. Upon arriving, Boardman observed that Respondent was holding a male suspect. Boardman was not aware if Respondent had frisked the man but it would have been unusual not to frisk the suspect before placing him in handcuffs. Boardman transported Respondent and the suspect to the 84 Precinct.

On cross examination, Boardman testified that Respondent escorted the suspect into the precinct. Boardman and Isaac then drove off to respond to other calls.

Police Officer Anthony Isaac

Issac, a nine-year member of the Department assigned to the 84 Precinct, recalled that on September 30, 2011, he and Boardman transported Respondent and a burglary suspect back to the 84 Precinct. Isaac could not recall if the third platoon sergeant had asked him to take the arrest of the burglary suspect.

On cross-examination, Isaac confirmed that he and Boardman remained inside their RMP as Respondent escorted the burglary suspect into the precinct. They then drove off without entering the 84 Precinct.

Detective William Connor

Connor, who has been assigned to the 84 Precinct for nearly four years, recalled that on September 30, 2011, he was inside the 84 Precinct when he saw Respondent standing with a prisoner who Connor recognized as Person A. Connor told Respondent, "Oh, you got my guy," since Person A was wanted on an open complaint that Connor had been assigned. Respondent told Connor that since he had arrested Person A, he would process the arrest. Connor told Respondent that was fine with him since Connor was signing out and had to go pick up his daughter. Connor then went upstairs to the squad room, but he was called back downstairs by Sergeant Albert a short time later. Albert asked Connor if Person A was his case, to which Connor responded in the affirmative. Albert asked Connor if he could process the arrest and Connor said that he would. Connor testified that it would have been unusual for a police officer to take an arrest based on a prior burglary complaint. Although Connor had signed out end of tour at 4:15 p.m., he processed the arrest of Person A until 6:45 p.m. Connor did not put in

for overtime. Connor had no recollection of having asked anyone else to take the arrest of Person A after Albert asked him to process the arrest.

On cross examination, Connor testified that he did not bring Person A in front of the desk sergeant nor did he lodge him in a holding cell. Connor testified that he learned that Person A had attempted to commit suicide trying to hang himself inside his cell.

Respondent

Respondent, a 26-year member of the Department who is on modified duty is currently assigned to VIPER 11 at Police Service Area (PSA) 7 which he described as a punishment post. Respondent received a community award for locating a plane that crashed in water in 1990. After having been assigned to various commands, Respondent was transferred to Transit District 30 and assigned to what he referred to as a punishment post under the MTA building in Brooklyn. From there, Respondent was assigned to what he considered another punishment post which was operating the gate to the property clerk's office in College Point, Queens. Respondent remained there for nearly 15 years. In February, 2010, Respondent was transferred to the 84 Precinct.

Respondent testified that two days after he arrived at the 84 Precinct, he observed officers and supervisors whom he considered "incompetent." Respondent cited as an example that when he was first assigned to the fixed RMP post at the Brooklyn Bridge, the location of the post required him to look directly into the morning sun which obstructed his ability to see traffic moving onto the Brooklyn Bridge. Respondent moved his RMP to the other side of the Brooklyn Bridge so that he could see the traffic going onto the bridge. A sergeant approached Respondent and told him that he was on the wrong post site and directed him back to the original post site. Respondent went back but because he

was unable to see because the sun was still in his eyes, he returned to the other side which, because it was shaded, enabled him to see the traffic going onto the bridge. The sergeant stopped by again and asked him why he was not at the correct post location. Respondent told the sergeant that the rental truck containing fertilizer used for the first bombing at the World Trade Center had gone unseen. The sergeant then directed Respondent to go back to the designated post as the sergeant did not want the commanding officer to give the sergeant a hard time. Respondent complied with the sergeant's direction.

During Respondent's 16-month tenure at the 84 Precinct from February, 2010, to July, 2011, Respondent did not receive any command discipline. During most of that time, Respondent was assigned to the fixed RMP post at the Brooklyn Bridge with no partner. On rare occasions, Respondent was assigned to a sector car, but then he would be returned to the bridge post. When Respondent was transferred to the 84 Precinct, only one officer at the 84 Precinct had more time "on the job" than he did.

On July 8, 2011, Dyce informed Respondent that he and Officer Plunkett would be transporting three prisoners who were "walk-throughs." Respondent did not know what a "walk through" was. The courthouse was approximately one and one half miles from the 84 Precinct. Dyce informed Respondent that he was to take the prisoners to Brooklyn Central Booking and then to court. Respondent and Plunkett transported the prisoners to Brooklyn Central Booking at approximately 2:30 p.m. Upon arriving there, he found out that the two prisoners were not going to be "walk-throughs" but instead were going back into the system and had to be reexamined by EMS, re interviewed, and then searched. Plunkett took one prisoner who was a return on the warrant while

Respondent escorted the other two handcuffed prisoners. At 4:00 p.m., when the change of tour took place, Plunkett returned and asked how Respondent was doing, to which he relied that his prisoners were not "walk-throughs" and that he had to wait with them.

Plunkett asked Respondent if he wanted relief. Respondent told him to inform the 84 Precinct that he was still at Central Booking and that the prisoners were not "walk-throughs." Plunkett went back to the 84 Precinct.

A Brooklyn Central Booking sergeant told Respondent that he needed him to help transport thirty prisoners, that these prisoners were not "walk-throughs" and that one of the prisoners needed to have a DNA test. Respondent admitted he did not know how to do a DNA test. The sergeant gave him an envelope for the DNA swab. Respondent assisted a female officer in putting twenty nine prisoners on a chain, and then brought the prisoner upstairs for the DNA test. As Respondent was trying to find his way with the prisoner, he ran into Officer Malloy who told him that she was there to relieve him. Respondent informed Malloy that he had one prisoner with him, another prisoner in Brooklyn Central Booking, and that one of them needed a DNA test. Malloy checked in the computer system and then informed Respondent that the prisoner had already given a DNA swab. Malloy then relieved Respondent. Respondent stated it was approximately 5:50 p.m., when he left Brooklyn Central Booking to return to the 84 Precinct and that he arrived back at the precinct at approximately 6:30 p.m., through heavy rain.

Upon arriving, Respondent observed Lieutenant Morrissey at the desk. Morrissey asked Respondent where he had been. He informed her that he had been at Brooklyn Central Booking. Morrissey then called Central Booking. Morrissey asked Respondent what time he had been relieved. Respondent replied that Malloy relieved him at

approximately 4:20 p.m. Morrissey asked Respondent why he had not called for a car. Respondent said that he had never called for a car and that he did not know he could call for transportation back. Respondent stated that he took public transportation back.

Respondent believed he had signed a return roll call that day, which was used to keep a record as to when the officers actually "left" the building. Respondent testified that he did not call the 84 Precinct at the end of his scheduled tour because he had to watch a prisoner and because he was ordered to assist in escorting 29 prisoners and because he was told to bring his prisoner upstairs for a DNA test. Respondent further testified that although Morrissey told him that he should have gotten a court officer to watch his prisoner so that he could call his command, Respondent said that he did not leave his prisoners. Respondent claimed that last time he knew of someone at the job leaving a prisoner with another officer, two detectives were killed on the Grand Central Parkway because that prisoner was not searched, and he had a detective's off-duty five-shot revolver. This was Respondent's first prisoner escort and he observed signs all over Brooklyn Central Booking stating, "You will not walk away from your prisoner at any time, order, CO of Central Booking." Respondent ran into Mangan who told him, "Malloy fucked you." Respondent was placed on modified assignment and was issued a CD as a result of this incident.

On July 16, 2011, Respondent received an assignment to work at a CRV with Officer Torres. They drove to the lower Manhattan muster area where they waited for over an hour to receive their assignment. At approximately 8:45 a.m., they were told to report to the "Holiday Inn" at 48th Street in Manhattan. On their way, since Respondent had not eaten for six hours, he ran into a diner, bought two coffees and two bagels, and

ran back to their RMP. They were delayed in arriving at 48<sup>th</sup> Street by a crane and a street fair which blocked several streets. After taking two to three minutes to drive each block, Respondent and Torres arrived at 48th Street, but could not find a Holiday Inn or a Crowne Plaza there. While Torres was asking a doorman where the hotel was, the lieutenant called Respondent on his cell phone and asked him where they were. Respondent informed his lieutenant that he was on 48th Street, where Broadway and Seventh Avenue intersected. The doorman pointed to a hotel which had an entrance that appeared to be blocked by vendors. Respondent informed the lieutenant that they would be there in five minutes. Respondent and Torres proceeded to drive around the block, and arrived on 48th Street. Respondent exited the RMP and while he was looking for the Crowne Plaza, he observed a RMP driving up 48th Street. Respondent asked Torres for her Activity Log and he made the entries of 9:55 a.m. for arriving at the corner and 10:00 a.m. for going around the block.

The lieutenant approached Respondent and asked him where they had been. Respondent informed the lieutenant that they had stopped for coffee. The lieutenant took Respondent's Activity Log and wrote in it. The sergeant then showed up and told Respondent and Torres that they were in the "boondocks." Respondent testified that it had taken them approximately forty-five minutes to drive to their post from the muster location.

On July 23, 2011, sometime between 12:30 and 12:45 p.m., Respondent and Wooden responded to a larceny in progress call that perpetrators were stealing cable. When they arrived at the scene, Respondent interviewed two Con Ed employees who saw perpetrators put cable in a vehicle and drive off. They did not see what kind of car was

used during the commission of the crime nor did they get a license plate. A woman pointed out tools by a tree including a quarter-inch bolt cutter commonly used to open up a lock or cut a chain on a fence, chrome pruning shears, and a black hammer. Respondent took the tools and threw them into the trunk of their RMP. Respondent and Wooden then responded to several other calls, including a cardiac arrest, an assault, and a dispute.

At approximately 4:05 p.m., Respondent returned to the precinct with Wooden. Respondent told Wooden that he would voucher the tools. Respondent retrieved the tools from the trunk and placed them on a table in the muster room near the sergeant's desk. Respondent informed Morrissey and Brogan that he would be right back and went to change out of his sweaty uniform, which was drenched from the 105 degree weather, and to use the restroom. When Respondent returned, Morrissey asked to see his Activity Log. Morrissey asked Respondent when he had taken possession of the tools. He told her that he got them at about 12:45 p.m. Morrissey further asked if the sergeant knew about them. Respondent replied "No." Morrissey examined his Activity Log and told him that his last entry was at "13-something." Respondent told her that he had not yet had a chance to update his entries but that he had written the call dispositions and other necessary information on a piece of paper. Respondent told Morrissey that Wooden's Activity Log was up-to-date because he had given her the dispositions, as he was the recorder and she was the operator. Respondent claimed that he projected his voice as to be heard over the air conditioning and because Morrissey was standing about forty feet from him, but that he never raised his voice at Morrissey. Morrissey never told

Respondent that he was speaking to her in a disrespectful manner nor did she comment on how he was dressed.

Respondent testified that his July 2011 MAR was due at 12:01 a.m., on the fourth day of the following month. On August 2, 2011, Dyce asked him to report to the indoor range on Avenue X in Brooklyn on the next day and so on August 3, 2011, he fired and qualified for that cycle and filled out his July 2011 MAR. On August 9, 2011, he was called into Deputy Inspector DiPaolo's office where Mangan asked him if his July 2011 MAR was proper. Respondent said that it was. Respondent explained that Morrissey had "kicked him off" 4:00 p.m. to 12:00 p.m. tours and he was now working day tours. Respondent said that he had been getting harassed by the lieutenant and the sergeants on the 4:00 p.m. to 12:00 p.m. tour. Respondent was questioned about the comments that he had written on his July 2011 MAR. Respondent claimed that he was always being questioned about his overtime and his work. Respondent said that he was being accused of stealing time and that Morrissey refused to pay him his overtime. Respondent asked DiPaolo and Mangan how they were going to handle that situation. They responded by asking Respondent if he thought his actions were appropriate, to which Respondent said yes, and that he was not going to have them put down what they want him to put down and have him sign it. Respondent said that he was not going to go to jail for perjury as he had seen that happen to other officers. The supervisors told him to resubmit his July 2011 MAR. Respondent re-wrote his July 2011 MAR which his supervisors accepted.

On September 30, 2011, Respondent transported a prisoner named Person A to the 84 Precinct. When he arrived at the precinct, the 8:00 a.m. to 4:00 p.m. tour was ending, and the 4:00 p.m. to 12:00 p.m. tour was beginning. As he stood near the desk,

he observed that Holub, the desk officer, was on the phone. There appeared to be a lot of activity at the desk.

Respondent testified that he often has a feeling as to what prisoners were going to do when he placed handcuffs on them. Since Person A kept repeating that he could not go back to jail, Respondent told Glancy that he was going to put the prisoner into a cell because he was "starting to go crazy." Glancy told Respondent to put the prisoner in a cell, and to get changed, because he would not be getting overtime again like he did for a previous petty larceny arrest. Respondent saw that there were male prisoners in one cell and female prisoners in another cell and no cell attendant in the holding cell area. Respondent emptied Person A's pockets, which contained \$2,400, and checked his groin area. Person A went to the bathroom. Respondent then put Person A into the cell with the other males. There was still no cell attendant present. Respondent told Glancy that he was going to tell Connor that he had his "collar." Respondent turned over the arrest to Connor and told him that he searched Person A but that Person A was starting to get a little crazy. Respondent informed Glancy that he had taken \$2,400 out of Person A pockets, and that Connor was taking the "collar." Respondent then went off duty.

On October 1, 2011, Sergeant Sabbio conducted roll call for the second platoon at the 84 Precinct. Sabbio informed the officers that they had to completely check prisoners before putting them in a cell because there had been a prisoner who had tried to commit suicide. Respondent thought of Person A. Sabbio asked Respondent why he had a smirk on his face. Sabbio stood in front of Respondent for thirty seconds to one minute and asked Respondent if he thought it was funny that a prisoner had tried to commit suicide. Respondent asked if it was his prisoner from the day before. Sabbio turned around and

walked away. Respondent testified that he did not break the order of roll call nor did he interrupt Sabbio or raise his voice to him. Roll call lasted approximately two minutes. No directions were given to Respondent by Sabbio or any other supervisors after roll call.

On October 2, 2011, Respondent was assigned a Brooklyn Bridge assignment on Adams and Tillary Streets in a marked patrol vehicle (RMP). The purpose of that post was “omnipresence for terrorism.” Respondent recalled that there were about 3,000 people out on the Brooklyn Bridge pathway and 500 police officers, because there was a march for diabetes from Manhattan to Cadman Plaza. Holub had about twenty men and women in the middle of the island. Respondent had ten officers standing near his post. There were additional officers at the intersection.

Respondent heard a scream and saw a girl, who appeared to be about ten years old, screaming and holding her face. Respondent then heard people exclaim, “Oh my God, the dog is going to get killed!” Respondent then observed a dog running down Adams Street towards Tillary and that westbound traffic on Tillary and Adams had stopped. Respondent was the only officer in the area of the Brooklyn Bridge who was in a marked RMP. He felt he could and should do something. Respondent drove his RMP to the intersection and observed that the dog had tags and a collar and did not appear to be a stray dog.

Respondent explained that he was not “chasing” the dog which only had two-inch legs and that he did not try to drive in front of the dog because he would have “rolled over it.” Instead, based on his prior work experience at the 45 Precinct where they had used a specific formation on major highways to bring a car to a stop or slow-down, Respondent employed that tactic. Respondent claimed that the car formation he

was attempting to use was the same that was taught to him at Highway training.

Respondent was using his training to ensure that the people saw him because he was concerned as he was approaching three dangerous intersections. One of the dangerous intersections was at Tillary and Adams, which had a high accident incident rate as cars were coming off the bridge at high speeds. Respondent then observed the dog go towards another dangerous intersection point at Jay and Tillary. Respondent made a right turn onto Jay Street, and headed towards Fulton Street. Respondent observed that civilians were attempting to catch the dog, but the dog was still loose and running back toward Respondent's RMP.

Respondent then testified about the time that he had spent in Australia, New Zealand, and Texas, where he observed the handling of sheepdogs, and that when the dogs would be head-to-head with each other they would make a 180-degree turn. He stated that he therefore expected this dog to make a 180-degree turn, which was what it did. The dog then ran up Jay Street to where Sergeant Walsh and ten officers were. Respondent believed he said something over the police radio but could not recall what. Respondent recalled that the lights on his RMP were on.

Respondent next observed the dog running on the Flatbush Avenue Extension towards the Manhattan Bridge where all of the trucks, buses, and commercial vehicles exited from the bridge. Respondent testified that Walsh then approached Respondent at his window and told him, "Fuck the dog." Respondent continued to drive after the dog for approximately another five to eight minutes. Respondent observed the dog going towards the intersection of Flatbush Avenue Extension and Tillary Avenue and he saw a female police officer get out of her police vehicle and attempt to catch the dog. The dog

continued to run free toward Gold Street and Tillary Avenue. Respondent then observed Walsh driving a police van with lights and sirens on. Walsh got out of the police van, walked up to Respondent and told him to go back to his post. Walsh told him that he was going to "scratch" him back at his post. Respondent then returned to his post. Walsh followed Respondent and when they arrived at Respondent's post, Walsh took Respondent's memo book and wrote in it, and then left. At approximately 1:40 p.m., Sabbio showed up at Respondent's post and informed him that he was being relieved and that Sabbio was taking him back to the 84 Precinct.

Back at the 84 Precinct, Respondent was sitting in the muster room with Sabbio when the owner of the dog entered the precinct and told them that she wanted to report a missing dog. Respondent told her that her dog was not missing and that Respondent had attempted to catch the dog but that it was too fast. Approximately twenty minutes later, the owner of the dog returned with her children and the dog. Respondent told them to go and thank Holub and Sabbio for catching the dog. Respondent was called into the commanding officer's office and was told to hand over his firearm and shield because he was being placed on modified assignment. Respondent stated that he did not know why he was being placed on modified assignment. Respondent was told to report to the Personnel Bureau at One Police Plaza, that he was going to get new orders and that he had to see a "shrink." Respondent has been on modified duty since October 2, 2011.

On cross examination, Respondent testified that on July 8, 2011, his tour ended at 3:40 p.m., that he was relieved by Malloy at approximately 5:20 p.m., and that he signed out at 6:40 p.m. Respondent testified that after being relieved, he walked from the court house directly back to the precinct, but because there was heavy rain, thunder and

lightening, it took him approximately one hour and twenty minutes to walk about three-quarters of a mile. Respondent did not call the desk sergeant at his command at the end of his tour because Respondent believed that the sergeant knew where he was. During an official Department interview, Respondent stated that he had waited for the rain to subside before exiting the courthouse and walking back to the precinct. While at the courthouse, Respondent never asked anyone if he could use a telephone to call his command.

On July 16, 2011, when Respondent and Torres were at the muster location in downtown Manhattan, a sergeant directed them to go to their post but the sergeant did not tell them to go directly to their post. During his official Department interview, when Respondent was asked if they had been instructed to go directly to their post, Respondent answered in the affirmative. At this trial, Respondent did not recall giving that answer. Respondent reiterated that they had made a stop to get two coffees and two bagels on the way to their post. Respondent testified that prior to arriving at the post he had already filled out his activity log entry.

On July 23, 2011, after Respondent placed the tools in the trunk of the RMP, he and Wooten handled about five additional calls. Respondent asserted that Brogan's testimony that Respondent did not inform him about the property was a lie. Respondent agreed that had not yet filled out the voucher paperwork before going downstairs to the bathroom and that Morrissey asked to see Respondent's activity log to question the time frame between the time he found the property and the time he was presenting the property to the desk sergeant. Respondent denied that he was frustrated or angry with

Morrissey when she made a copy of Respondent's activity log. Respondent testified that he did not "get into it" with Morrissey.

Respondent agreed that he wrote in his July 2011 MAR, "been there, done it, what next," and that he also wrote that he had been accused of stealing time and that he had been issued a "CD" and was a victim of "discrimination." Respondent turned in his July 2011 MAR on August 7, 2011, after he had returned to duty from his regular days off. Contrary to what Dyce testified, Respondent asserted that Dyce had never reminded him to turn his July 2011 MAR and that she had lied when she testified that she had reminded him to turn in his July 2011 MAR.

On September 30, 2011, when Respondent entered the precinct with the prisoner, he waited for Holub to acknowledge him at the desk area. Holub did not make any verbal acknowledgment. Respondent waited at the desk area with the prisoner for approximately five minutes, while Holub was tending to other matters. Respondent asserted that Holub knew he had a prisoner since Holub was standing nearby and Holub had made eye contact with Respondent. Respondent also asserted that Holub knew that he had put the prisoner in a holding cell. During his official Department interview, he stated that Holub had not acknowledged him because Holub was talking on the telephone. Respondent further stated in that interview that although Glancy instructed him to go downstairs, Holub did not have any knowledge that the prisoner was being placed into a holding cell. At this trial, Respondent did not recall that he had made those statements at his official Department interview. Respondent agreed that the normal first step in the procedure of bringing in a prisoner for arrest processing was to wait for the desk sergeant to verbally acknowledge the escorting officer who would then conduct a search of the

prisoner in front of the sergeant and remove any telephones, money or other items that the prisoner had on his person and place these items on the desk. The officer also informs the sergeant of the prisoner's pedigree information and the arrest charges or charges. The desk sergeant would then stamp an arrest stamp in the command log. Respondent agreed that all of these protocols are done at the desk in conjunction with the desk sergeant.

Respondent claimed that he conducted "half" of these procedures including searching the prisoner, obtaining the prisoner's pedigree information, taking possession of the prisoner's "stuff," and informing Glancy of the presence of the prisoner. Respondent said that Glancy told him that he was "not getting 13 hours of overtime" as he had regarding a recent petty larceny arrest. Respondent then informed Connor that he had his prisoner downstairs and asked him if he wanted that arrest. Connor told Respondent that Albert wanted the arrest. Respondent then informed Glancy that it was not his arrest anymore. Respondent asserted that he did nothing improper and that he had followed the procedures for prisoner arrest processing.

Respondent agreed that on October 1, 2011, while Sabbio was conducting roll call he addressed prisoner safety and the necessity for arresting or escorting officers to present prisoners at the front desk. Respondent claimed that he did not smirk and that he was not discourteous or disrespectful to Sabbio. Respondent denied that he had spun around in a circle, or raised his hand in the air, or shouted "Yahoo!"

Respondent was asked, "But you did make a statement to him during roll call, correct?" Respondent answered, "You better believe I did," and then testified that he had told Sabbio, "You thought it was very funny taking \$2,400 out of my back pocket

yesterday when they all raped me and you jumped on the wagon, sir." Respondent admitted that he had also told Sabbio, "Yes sir, I think it's hysterical. You didn't think it was so funny yesterday when you raped me and I'm your squad and I said to the gentlemen 'Never let anyone rape your men and women.' " Respondent asserted that he made these statements to Sabbio because he had made the roll call a "one-on-one" involving only the two of them. Respondent asserted that his comments were an appropriate way to speak to a supervisor and that his remarks were not discourteous. Respondent testified he did not do or say anything wrong during this roll call.

On October 2, 2011, Respondent was assigned to a fixed post inside a marked RMP on the Brooklyn side of the Brooklyn Bridge. When he was asked if he was supposed to remain on that post, Respondent replied that that was a tough question. Respondent asserted that it was his understanding that he could leave the post if a member of the public came up to him and informed him of something that required him to take necessary police action such as informing him that there was "a jumper" on the Brooklyn Bridge or informing him that a car was on fire on the bridge. Respondent knew that his post was a face-to-face relief post because he was informed of that by Sergeant Walsh. Respondent believed that he could leave the post if either a person or property was potentially in danger.

Respondent saw a dog that was less than 18 inches running free. Respondent admitted that the dog did not present a threat to humans but he feared that the dog might get hurt. Respondent already had the RMP's turret lights on. He turned on his siren, put the RMP in motion and began to follow the dog. Respondent stated that the Brooklyn

side of the Brooklyn Bridge was manned with 50 officers. Respondent did not recall if he had made a radio transmission requesting permission to leave his post.

During his official interview, Respondent stated that he did not radio that he was leaving his post. When he was asked whether he had notified a supervisor that he was abandoning his post to go after a dog, Respondent stated that he had eye contact with Holub who was at his post. Respondent said that Holub was only twenty feet away from him and observed him leave his post. Respondent did not verbally notify Holub but he did so "visually" as Holub saw the whole incident.

Respondent was driving in a specific manner moving back and forth between the lanes in order get other motorists to stop their vehicles, which he called the "international symbol" to make motorists stop. Respondent said that he was not "swerving." Respondent did not have to drive through any red lights, only through green lights. Respondent further stated that there were no motorists traveling in the same direction as he was.

Walsh approached Respondent's RMP, put his hand on the windshield and told Respondent, "Fuck the dog." Respondent stated that this was the third time that he had had an altercation with Walsh who he described as an "incompetent" supervisor. Respondent did not take Walsh's statement to mean that he should stop chasing the dog. Respondent took Walsh's statement to mean, "Who cares about the dog." Walsh did not give him any instructions at that point. Later, Walsh spoke to Respondent again and told him to go back to his post. Respondent stated that he followed his gut instinct and ignored the supervisor's order because he feared the dog was going to get killed. Respondent asserted that he did not believe that he did anything improper that day.

FINDINGS AND ANALYSISIntroduction

All of the misconduct in these charges is alleged to have taken place while Respondent was on-duty assigned to the 84 Precinct.

Specification Nos. 1 and 2

It is charged that on July 8, 2011, Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he failed to timely sign the Return Roll Call at the end of his tour and he failed to call the Desk Officer and report the reason why he would not be able to sign the Return Roll Call at the end of his tour.

It is not disputed that on July 8, 2011, Respondent was assigned to "walk through" prisoners by escorting prisoners from Brooklyn Central Booking (BCD) into the courthouse. I credit Morrissey's testimony that she started her tour of duty as the desk officer at about 2:45 p.m.; that since she knew that Respondent's tour was scheduled to end at 3:40 p.m. she assigned Officer Malloy to relieve him to avoid incurring operational overtime; and that Officer Malloy left the 84 Precinct at 3:30 p.m. to drive to Brooklyn Central Booking which was less than one mile away.

Respondent asserted that Malloy did not relieve him until 5:50 p.m. Malloy told Morrissey that she relieved Respondent at 4:00 p.m. I credit Malloy's statement to Morrissey because to credit Respondent's claim I would have to find that Malloy disappeared for nearly two hours. I also credit Morrissey's testimony that when she saw Respondent inside the 84 Precinct after 6:00 p.m. and asked him what he had been doing

since Malloy had relieved him he replied that after he was relieved by Malloy he had accepted a new, post-end-of-tour assignment to escort prisoners into a courtroom.

Also, I credit Morrissey's testimony that a BCD supervisor told her that Respondent's new assignment had been to escort prisoners from another command into a courtroom and that this new assignment absolutely should not have taken two hours to perform.

Respondent offered no plausible explanation as to why he was not able to telephone the 84 Precinct front desk from either BCB or a courtroom at the end of his tour to report that he was still there and that he had been given a new escort assignment.

The record shows that Respondent had a motive not to call the desk at the end of his tour because he knew that if he called in the desk officer would send a third platoon officer to replace him and he wanted to earn overtime. In this regard, I find it significant that at his official Department interview Respondent admitted that he "waited for the rain to subside" before he left BCB to start walking back to the 84 Precinct. Finally, although Respondent asserted that he "believed" that he had signed the return roll call, I credit Morrissey's testimony that he did not do so in a timely manner.

Respondent is found Guilty.

Specification No. 3

It is charged that on July 16, 2011, after having been instructed by his immediate supervisor to report directly to post from the muster location, Respondent failed to comply with this instruction in that he failed to timely arrive at his assigned post.

I find Respondent Guilty because I credit Brabham's testimony that at the muster location in lower Manhattan he instructed all of the mustering officers to proceed directly from the muster location to their assigned posts.

Respondent's assigned post that day was the CRV located at the Crown Plaza Hotel on 49<sup>th</sup> Street, Manhattan. Respondent acknowledged that while he and his partner were traveling from the muster location in lower Manhattan to the CRV on 49<sup>th</sup> Street, he stopped at a store and purchased two coffees and two bagels.

The parties stipulated that Respondent was released from the muster location in lower Manhattan to deploy to his post at 8:45 a.m. and I credit Boykin's testimony that Respondent did not arrive at the CRV until 10:02 a.m. at which time Boykin "scratched" Respondent's Activity Log. Thus, by stopping for coffee and bagels, Respondent failed to comply with Brabham's instruction that the officers proceed directly from the muster location to their assigned posts and he did not arrive at his post in a timely manner.

Respondent is found Guilty.

Specification Nos. 4, 5 and 6

It is charged that on July 23, 2011, Respondent failed to make proper activity log entries pertaining to any assigned "jobs" or dispositions "after 1305 hours;" that he was discourteous to Morrissey in that when she inquired about the property he was attempting to voucher he became disrespectful and belligerent; and that he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he failed to notify an 84 Precinct supervisor that he was present inside the station house after he had "gone end of tour."

Respondent's witness Wooten testified that he and Respondent responded to a theft at a Con Ed building, that Respondent recovered two or three tools at the scene, placed them into the trunk of their RMP, and told Wooten that he would voucher them. Wooten further testified that after 1:05 p.m., he and Respondent responded to "three or four jobs." Respondent's and Wooten's tour ended at 3:40 p.m. Even though Wooten and Respondent responded to multiple "jobs" after 1:05 p.m., when Morrissey examined and made a copy of Respondent's Activity Log at 5:00 p.m., Respondent had made no Activity Log entries for July 23, 2011 after 1:05 p.m. (DX 3)

I credit Morrissey's testimony that at 5:00 p.m. she observed Respondent, who was not signed out, standing at the front desk in civilian clothing attempting to voucher property. I further credit Morrissey's testimony that when she asked Respondent about the property he was vouchering, he demanded to know, speaking in a condescending voice, "Who are you to question me?" Morrissey's testimony is believable because Brogan corroborated her claim that she told Respondent "Stop!" more than once, and because Morrissey candidly acknowledged on cross-examination that although Respondent was loud, he did not scream at her.

Brogan's claim that he heard Morrissey repeatedly tell Respondent to "stop" is believable because Brogan did not claim that he had heard anything else that Respondent or Morrissey said. If Morrissey was out to get Respondent, it is likely that she would have claimed that he had screamed at her and if Brogan was out to get Respondent, it is likely that he would have claimed that he had heard more than just the word "stop."

Respondent asserted that Morrissey had no right to question him about the property he was vouchering because he was assigned to the second platoon and

Morrissey was a supervisor on the third platoon. However, the fact that Morrissey was not his immediate supervisor did not give Respondent the right to address Morrissey in such a challenging manner or to ignore her initial admonition that he "stop." I find that the reason that Respondent challenged Morrissey's authority was because he knew that he should have vouchered the tools he recovered earlier while he was still in uniform, and because she was making a copy of Respondent's Activity Log entries and Respondent was aware that he had made no entries whatsoever regarding the "jobs" that he and Wooten had handled after 1:05 p.m.

Respondent is found Guilty.

Specification Nos. 7 and 8

It is charged that Respondent failed to timely submit his Police Officer's Monthly Performance Report (PD439-1414) for July 2011 which was due on August 3, 2011, and that when Respondent submitted this report on August 9, 2011, he wrote inappropriate statements on the report.

I find Respondent Guilty because I credit Dyce's testimony that although Respondent's July 2011 MAR (DX 1) was due on August 3, 2011, and even though she reminded him three times to get his report to her, she did not receive his MAR from him until August 9, 2011. Dyce's testimony is supported by the fact that Respondent entered the date "8/7/11" next to his signature on his MAR.

Dyce's testimony and the MAR form itself establish that in completing an MAR an officer is required to cite specific dates in the left hand column and to "List Significant Achievements" regarding "General Enforcement against crime, quality of life and traffic violations" next to the dates.

However, on line 2 of his MAR, Respondent wrote "been there/done it/what next" and in the "General Enforcement" section in the column headed "Date" where the officer is required to cite the specific date an action was taken, Respondent wrote "7/2011" and next to this Respondent wrote, "Excellent police work on day tour 8X4. But 4X12 supervisors removed cash O/T slips, accused of stealing time, issuing CDs for day tour work, ordered not to take police action, but never put in writing for memo book entry and/or signing memo book/ Discrimination;" and in the section underneath the "General Enforcement" section which is headed "Declared Condition" Respondent wrote, "Same as reported above." These statements were clearly inappropriate statements

Respondent is found Guilty.

Specification No. 9

It is charged that on September 30, 2011, Respondent failed to inform the Desk Officer that he had brought a prisoner into the 84 Precinct.

I find Respondent Guilty because I credit the testimony of Holub that when he asked Respondent if he had escorted a prisoner into the station house and put him into the holding cell without first presenting the prisoner in front of the desk or bringing the fact that the prisoner was present to Holub's attention, Respondent replied in the affirmative and asserted that at the point in time when he escorted the prisoner into the station house Holub was on the telephone and appeared to be busy so Respondent decided on his own to secure the prisoner by putting him into the holding cell. An officer who escorts a prisoner into a precinct is required to present the prisoner in front of the desk before the officer searched the prisoner and places the prisoner into a holding cell.

Respondent asserted that as he escorted the prisoner into the station house, although the desk was very busy, he had eye contact with Holub which alerted him that Respondent had a prisoner. Respondent further claimed that because the prisoner kept repeating that he could not go back to jail, he told Glancy that he was going to put the prisoner into a cell because the prisoner was "starting to go crazy," and that Glancy then authorized Respondent to put the prisoner in the holding cell. However, I credit Glancy's testimony that he did not authorize Respondent to lodge a prisoner in a holding cell without having first presented the prisoner to the desk officer. I do not believe that Glancy would have authorized Respondent to place a prisoner in a holding cell without having first presented the prisoner to the desk officer because Glancy would have been aware that since the contents of the prisoner's pockets had not been emptied at the front desk and the prisoner had not been searched, all of the other prisoners in the holding cell in which the prisoner was placed would have to be removed and re-searched, which is exactly what had to be done, to insure that Respondent's prisoner had not passed any items to another prisoner.

Respondent is found Guilty.

Specification No. 10

It is charged that Respondent, on October 1, 2011, was discourteous during Second Platoon Roll Call in that he acted in a disruptive and disrespectful manner.

I find Respondent Guilty because I credit the testimony of Sabbio that while he was giving instructions on prisoner safety to Respondent and 14 to 16 other officers who

were present at the roll call, Respondent began dancing around in a circle, twirling his right index finger in the air, laughing, and loudly exclaiming, "Yahoo."

I credit Sabbio's claim that Respondent engaged in this discourteous conduct because Sabbio's testimony showed that he was not out to get Respondent. Sabbio candidly acknowledged that on the previous day when the prisoner was brought in front of the desk he did not appear to Sabbio to be a threat to himself and no one told Sabbio that the prisoner might be a threat to himself. Sabbio also candidly acknowledged that that Respondent's twirling lasted only seconds and that none of the officers who were present stated that they were so distracted by Respondent's actions that they had missed his instruction on prisoner safety. Also, if Sabbio was out to get Respondent, it is likely that he would have demanded that Respondent be served with Charges & Specifications for courtesy and interrupting roll call. It is not disputed that Sabbio only issued Respondent a CD.

Although Respondent denied that he had spun around in a circle or uttered "Yahoo" at the roll call, when Respondent was asked, "But you did make a statement to him during roll call, correct?" Respondent answered, "You better believe I did," and then admitted that he had told Sabbio, "You thought it was very funny taking \$2,400 out of my back pocket yesterday when they all raped me and you jumped on the wagon, sir." Respondent admitted that he had also told Sabbio, "Yes sir, I think it's hysterical. You didn't think it was so funny yesterday when you raped me and I'm your squad and I said to the gentleman 'Never let anyone rape your men and women.' " Respondent asserted that he spoke to Sabbio in this manner because Sabbio had made the roll call a "one-on-

one" between the two of them and that, therefore, he believed that this was an appropriate way to address Sabbio and was not discourteous.

Since he had no right to address a supervisor in the manner in which he admitted he addressed Sabbio at roll call in the presence of a number of officers, Respondent is found Guilty.

#### Specification No. 11

It is charged that on October 2, 2011, Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he drove a Department vehicle in a "reckless" manner while in pursuit of an escaped dog;

Respondent is charged with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department, not with committing the Vehicle and Traffic Law (VTL) misdemeanor of Reckless Driving. Nonetheless, this VTL offense and the Penal Law definition of what constitutes "recklessly" are instructive in that they provide legal standards against which Respondent's driving can be measured in reaching a determination as to whether Respondent's driving constituted reckless driving.

Under the Penal Law, "(a) person acts recklessly...when he is aware of and consciously disregards a substantial and unjustifiable risk that" that a certain result will occur or that a particular circumstance exists. However, "(t)he risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."<sup>1</sup> Under the VTL, reckless driving means driving a motor vehicle "in a manner which unreasonably

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<sup>1</sup> Penal Law section 15.05(3).

interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway.”<sup>2</sup>

Respondent acknowledged that he had weaved his RMP side to side, which he described as an “international code” warning to other drivers, as he followed behind the dog. However, I find it significant that when Walsh made an entry in Respondent’s activity log regarding his action of driving the RMP away from the fixed post, he did not write that Respondent’s driving was reckless, only that he was off post and that he had left his post without notifying Central. Since Walsh saw Respondent drive by him and since Walsh then proceeded to follow Respondent’s RMP, if Walsh had observed Respondent driving in a reckless manner it is likely that he would have included this observation in the entry he made in Respondent’s activity log regarding this incident.

Since the Department did not meet its burden of proof regarding this charge, Respondent is found Not Guilty of Specification No. 11.

#### Specification Nos. 12 through 14

It is charged that Respondent, on October 2, 2011, was absent from his assignment without permission or police necessity; that he failed to notify the radio dispatcher of a pick-up assignment not emanating from the Communications Section in that he failed to notify the dispatcher that he was in pursuit of an escaped dog; and that he failed to comply with an order by Sergeant Walsh that he stop pursuing an escaped dog.

It is not disputed that Respondent’s assignment on October 2, 2011, was a fixed counter-terrorism post in an RMP permanently parked at the Brooklyn-side entrance to the Brooklyn Bridge. It is further undisputed that when Respondent saw a dog running in

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<sup>2</sup> Vehicle and Traffic Law section 1212.

traffic and became concerned that the dog might be hit by a car, Respondent left his fixed counter-terrorism post without radioing that he was leaving his post and followed the dog in his RMP in an attempt to try to protect the dog from traffic.

When he was asked whether he had notified a supervisor that he was abandoning his post to chase after a dog, Respondent replied that he had eye contact with Holub who was twenty feet from him and observed him leave. Respondent asserted that this eye contact constituted visual notification to Holub that he was leaving his post.

Although Respondent asserted that he viewed his action of trying to protect the dog from being run over by a car as a police necessity, his argument is not convincing. Respondent knew that the purpose of his fixed post was "omnipresence for terrorism," yet he admitted that he pursued the dog for several blocks. His claim that the Brooklyn-side entrance to the bridge was well protected in his absence because Walsh was there with ten officers on foot does not justify his action of leaving his fixed counterterrorism post without authorization to do so.

Finally, although Respondent asserted that he did not hear Walsh order him to "stop" his RMP, I credit Walsh's claim that he screamed "stop!" at Respondent several times from a close distance and that the RMP's windows were open.

I can only conclude that Respondent did not want to stop because he was enjoying his pursuit of the dog which provided him with the opportunity to use the driving skills he had learned when he received training from Highway which he described in great detail in his testimony.

Respondent is found Guilty of Specification Nos. 12 through 14.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 15, 1986. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of violating a number of Departmental procedures including failing to call in to the desk officer from court at end of tour; failing to promptly voucher property; failing to report directly from the muster area to his CRV post; failing to use his radio to request permission to leave his fixed counter-terrorism post; and submitting an MAR six days late.

Respondent has also been found Guilty of two instances of being discourteous to supervisors. Respondent admitted that he told Sabbio at roll call, "You thought it was very funny taking \$2,400 out of my back pocket yesterday when they all raped me and you jumped on the wagon, sir." Respondent admitted that he also told Sabbio, "Yes sir, I think it's hysterical. You didn't think it was so funny yesterday when you raped me and I'm your squad and I said to the gentlemen 'Never let anyone rape your men and women.' "

Respondent asserted that he only spoke to Sabbio in this manner because Sabbio had turned roll call into a "one-on-one" between the two of them. Because he had been singled out by Sabbio, he felt that his remarks were appropriate and were not discourteous. Respondent's explanation for his "you raped me" remark does not serve to mitigate his misconduct. Even if Respondent was being singled out by Sabbio,

Respondent had no right to address Sabbio, a supervisor, in the manner he did in the presence of numerous other officers at roll call.

I have also found that Respondent was discourteous to Morrissey in that after she questioned him about property he was trying to voucher while he was dressed in civilian clothing and then made a copy of his activity log entries, he condescendingly asked her, "Who are you to question me?" which resulted in Morrissey having to tell Respondent "Stop!" more than once.

Respondent has also been found guilty of two separate acts of misconduct that he appears to have engaged in solely for his own amusement. Even though Respondent knew that the reason that Sabbio was addressing prisoner safety at roll call was because a prisoner that Respondent had placed in a holding cell had attempted to hang himself, as Sabbio was speaking about prisoner safety Respondent performed a little jig by spinning in a circle, twirling his index finger in the air, laughing, and exclaiming, "Yahoo!"

Also, Respondent not only submitted his July 2011 MAR six days late, he treated this MAR as a joke by writing "been there/done it/what next" on the MAR and, in the section in which he was supposed to list specific enforcement actions he took during July 2011, by writing, "Excellent police work on day tour 8X4. But 4X12 supervisors removed cash O/T slips, accused of stealing time, issuing CDs for day tour work, ordered not to take police action, but never put in writing for memo book entry and/or signing memo book/Discrimination." Since Respondent was fully aware of what information he was supposed to enter on a MAR, he knew that these entries were inappropriate at the time he wrote them. Moreover, his cynical comments about supervisors on this MAR are

consistent with his testimony that after just "two days" at the 84 Precinct he formed the opinion that his new command consisted of "incompetent officers and supervisors."

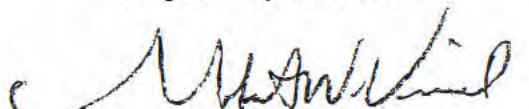
Finally, in what can only be described as a joyride, Respondent left his fixed counter-terrorism post without having obtained permission to do so and drove his RMP past a supervisor who yelled at him to "stop!" solely because he was trying to protect a dog that was running in traffic from being hit by a car.

Respondent's extensive formal disciplinary record (which is detailed in the attached Confidential Memorandum) shows that as the result of previous misconduct he has been placed on dismissal probation twice during his career.

The Assistant Department Advocate recommended that Respondent be dismissed from the Department.

It is recommended that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER DAVID KOZLOW  
TAX REGISTRY NO. 890310  
DISCIPLINARY CASE NO. 2011-5374

The Respondent received an overall rating of 3.0 on his 2012 performance evaluation, 3.0 on his 2011 evaluation, and 3.0 on his 2010 evaluation. He has been awarded one Medal for Exceptional Merit, one Meritorious Police Duty medal and five Excellent Police Duty medals. [REDACTED]

[REDACTED]  
He has an extensive formal disciplinary record. In 1998, he was suspended for 30 days after he was found guilty of having made discourteous and disrespectful remarks to an individual regarding the person's ethnicity. In 1999, he was suspended for 30 days and placed on dismissal probation for one year after he was found guilty at trial of all charges in two disciplinary cases. In one case, he was found guilty of having wrongfully prepared complaint reports alleging that MOS committed corruption or serious misconduct and failing to report to IAB or his CO that MOS had been alleged to have committed corruption or serious misconduct. In the other case, he was found guilty of having committed misconduct while on duty on three separate dates. On one date he failed to perform his assigned duty; on another date he failed to maintain his activity log; and on another date he failed to comply with an order.

In 2000, he forfeited ten vacation days after he pleaded guilty to being discourteous while on duty during 1998. In 2005, he was suspended for ten days and he was placed on dismissal probation for one year after he was found guilty at trial of engaging in unauthorized off duty employment between Feb. 2003 and April 2004. His one year period on dismissal probation ended on Aug. 25, 2006.

In 1998, he was placed in Level 2 Discipline Monitoring. In 1999, he was placed in Level 3 Special Monitoring. In 2006, he was placed in Level 3 Special Monitoring.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner – Trials